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DEPARTMENT OF TRANSPORTATION

Coast Guard

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33 CFR Part 165

[COTP Pittsburgh-02-018]

USCG-2002-13968-48

RIN 2115-AA97

Safety Zone; Youghiogheny River Mile 0.0 to 0.5, McKeesport,
Pennsylvania

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Youghiogheny River beginning at mile marker 0.0 and ending at mile marker 0.5. This safety zone is needed to protect the general public and vessels from the potential safety hazards associated with a train derailment and deposits of coal falling into the river. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port Pittsburgh, or his designated representative.

DATES: This rule is effective from 8 a.m. on July 25, 2002 until 8 p.m. on July 28, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Pittsburgh-02-018] and are available for inspection or

SEP 18

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copying at Marine Safety Office Pittsburgh, Suite 1150
Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA between 8 a.m.
and 4 p.m., Monday through Friday, except Federal holidays.
FOR FURTHER INFORMATION CONTACT: Petty Officer (PO),
Michael Marsula, Marine Safety Office Pittsburgh at (412)
644-5808 ext.114.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553 (d) (3), good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with a train derailment.

Background and Purpose

Due to a train derailment along with deposits of coal falling into the Youghiogheny River, the Captain of the Port Pittsburgh has established a safety zone from mile marker 0.0 to mile marker 0.5 in McKeesport, Pennsylvania. A safety zone is needed to protect the general public and vessels from the hazards associated with the train

derailment. Entry into this zone is prohibited to all vessels unless authorized by the Captain of the Port Pittsburgh, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit portions of the Youghiogheny River from miles 0.0 to 0.5, from 8 a.m. on July 25, 2002 until 8 p.m. on July 28, 2002. This safety zone will not have an impact on a substantial number of small entities because this rule will only be in effect for a short period of time.

If you are a small business entity and are significantly affected by this regulation please contact PO Michael Marsula, U.S. Coast Guard Marine Safety Pittsburgh, Suite 1150 Kossman Bldg. 100 Forbes Ave. Pittsburgh, PA at (412) 644-5808 ext. 114.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may

send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,

the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we so discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with

Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in

the National Environmental Policy Act of 1969 (NEPA).. A "Categorical Exclusion Determination" is available for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08-~~101~~ is added to read as follows:

165.T08-~~101~~ Safety Zone; Youghiogheny River Miles 0.0 to 0.5 McKeesport, Pennsylvania.

(a) Location. The following area is a safety zone: The waters of the Youghiogheny River beginning at mile 0.0 and ending at mile 0.5, extending the entire width of the river.


(b) Effective date. This section is effective from 8 a.m. on July 25, 2002 until 8 p.m. on July 28, 2002.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh, or his designated representative. They may be contacted via VHF Channel 16 or via telephone at (412) 644-5808.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 25, 2002


S. L. HUDSON
Commander, U.S. Coast Guard
Captain of the Port Pittsburgh